In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No.371 of 2003
Date of Decision: February 03, 2011

Mahant Major Dass

---Petitioner

versus

State of Punjab

---Respondent

Coram: HONBLE MR. JUSTICE GURDEV SINGH

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Present: Mr.Kanwal Goyal, Advocate,
for the petitioner

Mr. P.S.Paul, Deputy Advocate General, Punjab

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GURDEV SINGH, J.

The petitioner-accused, Mahant Major Dass, was the Mahant of Dera Talab Wala of Dhanaula and in that capacity had been maintaining and managing the properties of that Dera. He illegally sold the land of the Dera for ₹ 6400/- to one Lal Chand, thereby committed offence of criminal breach of trust. For his acts of omissions and commissions, he was removed from Mahantship, vide notification dated 8.2.1996, Ex. PW-6/A. On the direction of the Financial Commissioner, Revenue, Punjab, a criminal case was got registered against him by the District Magistrate,

Sangrur, who moved application dated 13.9.1996, Ex. PC. before the Senior Superintendent of Police, Barnala. On the basis of that application, FIR Ex. PW-9/B was registered against the accused and others. The investigation was conducted by Ashok Kumar, Inspector, PW-9, who collected the agreement to sell, Ex. PA, so executed by the accused and other documents and also recorded the statements of the witnesses under Section 161 Cr.P.C. After the completion of the investigation, the challan was put in before Sub Divisional Judicial Magistrate, Barnala, who came to the conclusion that there were sufficient grounds for presuming that the accused committed offences punishable under Sections 406 and 420 IPC. He was charged accordingly, to which he pleaded not guilty and claimed trial. To prove his guilt, prosecution examined Malkiat Singh ASI, PW-1, Rajinder Parshad, PW-2, Lal Chand, PW-3, Raj Kumar, PW-4, Gopi Chand SI, PW-5, Bikkar Singh, Reader, PW-6, Gopal Krishan Duggal, PW-8, Manjit Kaur, Revenue Clerk, PW-9.

After the prosecution closed its evidence, the accused was examined by the trial Court and his statement was recorded under Section 313 Cr.P.C. The incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied those circumstances and pleaded his innocence and false implication. He also pleaded that he was Mahant of the Dera, Talabwala and never sold any property or shop this Dera and had only been giving shops on rent. The orders passed by the Financial Commissioner, Revenue, Punjab, and Deputy Commissioner, Sangrur, were stayed by this Court. He was called upon to enter on his defence but he did not produce any evidence in his defence. After going through the evidence, so produced on

the record, and hearing Additional PP for the State and learned defence counsel for the accused, the Judicial Magistrate Ist Class convicted the accused for the offence under Section 406 IPC and acquitted him of the offence under Section 420 IPC. He was sentenced to undergo rigorous imprisonment for a period of three years. He preferred appeal against that conviction and sentence but the same was dismissed by Additional Sessions Judge, Barnala, vide judgment dated 14.1.2003. Now, the accused has preferred this revision petition against that conviction and sentence.

I have heard learned counsel for both the sides.

It has been submitted by counsel for the accused that letter Ex. PC, on the basis of which the FIR was registered against the accused, was written on the basis of the Notification dated 8.2.1996, operation of which has been stayed by this Court in the writ petition preferred by the accused and others. Once the operation of that Notification has been stayed, no action could have been taken on the basis of the letter Ex. PC. He further submitted that the accused as Mahant of the Dera, had the authority to alienate the property of the Dera for maintenance thereof. He only agreed to sell the property and there is no evidence that the amount received by him as earnest money/sale consideration was criminally misappropriated by him. Therefore, it cannot be said that any such offence was committed by the accused.

There is nothing on the record for concluding that the letter, Ex. PC, was written by the Deputy Commissioner on the basis of the notification dated 8.2.1996. That letter was written for registration of the case against the accused and others for the acts of omissions and commissions already committed by them before the issuance of the

Notification. Vide that Notification, all of them were removed from the Mahantship of different Deras. It is not the case of the prosecution that the case was got registered against the present accused and others on the ground that they were removed from the Mahantship. In support of the contention that the accused had the right to sell the properties of the Dera for the maintenance thereof, counsel for the petitioner has not been able to cite any such law. Even if it is so, that will not absolve the accused of the criminal liability, if any, incurred by him by criminally misappropriating the amount received by him as sale consideration.

Counsel for the petitioner could not challenge the evidence produced by the prosecution for proving that the accused executed the agreement to sell Ex. PA in favour of Lal Chand, PW-3, which was scribed by Raj Kumar, PW-4 and was attested by Rajinder Parshad, PW-2. All of them had made categorical statements that his agreement was duly executed by the accused, vide which he sold the property of the Dera in favour of Lal Chand and received ₹ 6400/-. No doubt, as submitted by the counsel for the petitioner, there is no direct evidence produced by the prosecution that the petitioner criminally misappropriated this amount of ₹ 6400/-. It is to be noted that the accused never admitted the execution of this agreement by him and he denied that fact when the same was put to him in his statement recorded under Section 313 Cr.P.C. Counsel for the petitioner has tried to refer to the contents of the agreement wherein it is mentioned that the accused agreed to sell this land for the purposes and maintenance of the Dera. That might be so, but the question is, whether he actually utilized that amount for that purpose or not. He has not produced any evidence in his defence for proving that fact nor has been able to elicit any fact on the

basis of which it may be inferred that he utilized this amount for the maintenance of the Dera. Once the prosecution proved that he received the amount of ₹ 6400/- for the sale of the property of the Dera, the onus was upon him to prove that he utilized that amount for that purpose. In the absence of any evidence to that effect, it is to be inferred that he criminally misappropriated that amount. The offence under Section 406IPC is proved against him beyond any reasonable doubt and there is no question of setting aside the conviction, so recorded by the trial court and upheld by the appellate court.

It has been submitted by the counsel for the petitioner that the petitioner stood the protracted trial for 14 years and has got a family to support, and that lenient view be taken. I do not think it just and expedient to extend the benefit of probation to the accused as he misappropriated the property of the Dera, which was held in trust by him. Even the protracted trial cannot be made a ground for granting that benefit. However, keeping in view the amount involved in the case and the other circumstances, the sentence of imprisonment, so imposed upon the accused, is reduced from three years to one year. The accused be taken into custody to serve the sentence.

Petition is disposed of accordingly.

Records of the trial court be returned forthwith

(GURDEV SINGH)
JUDGE

February 03, 2011
PARAMJIT